

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 53 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JADEJA SAJUBHA JETMALJI

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Appellant
MR KG SHETH, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 11/10/2002

ORAL JUDGEMENT

1. This appeal by the original plaintiff under
Section 100 of the Civil Procedure Code is directed
against the judgment and decree dated 16th October, 1981

passed by the learned Assistant Judge, Kachchh at Bhuj in Civil Regular Appeal No.60 of 1979 confirming the judgment and decree dated 12th February, 1979 passed by the learned Civil Judge (S.D.), Bhuj, Kachchh in Regular Civil Suit No.308 of 1977 dismissing the suit filed by the appellant.

2. The plaintiff's case was that he was Inamdar of the village and an ex-armyman. According to him, as per the provisions of Bombay Inams Abolition (Kachchh area) Act, 1958, he was entitled to hold and acquire agricultural lands upto economic holding as per Government Resolution No.JHR-4459-77 Sachivalaya dated 3rd January, 1965. According to him, the ex-armymen and servicemen had priority over all other persons to demand Government waste land as per the Government Resolution dated 1st March, 1960 and Inamdar had priority over ex-armymen as per the Resolution of Special Secretary dated 31st July, 1975. The Deputy Collector, Nakhatrana, by his order dated 12th October, 1972, held that as the Government land which was demanded by the plaintiff was Gauchar land, there was no question of granting the same to him. The Collector dismissed the appeal against the said order. The plaintiff filed appeal against the order of the Collector which was dismissed by Special Secretary (Revenue) by his order dated 24th June, 1977. The plaintiff contended that the finding of the Special Secretary that the suit land was Gauchar land and, hence, it cannot be granted to the plaintiff, was not just and proper because the suit land was not Gauchar land and even the Gram Panchayat had said that it had no objection if it was granted to the plaintiff. He also contended that the finding of the Special Secretary that he was not entitled to the suit land since he had sold away his other lands was not just and proper because he had sold away his lands for payment of debts. He, therefore, filed the suit after serving notice under Section 80 of the Civil Procedure Code and claimed the declaration that the orders of revenue authorities of the Government were illegal, arbitrary, null and void and he was entitled to get four acres of land, as demanded by him.

3. The defendant - State filed its written statement and contended that when the plaintiff demanded land, he had 29 acres 30 gunthas of land, out of which, he had sold away 18 acres and, hence, his request was not accepted because the land was to be granted to ex-armymen in order to rehabilitate them so that they might maintain themselves but such land was not to be granted to them if they sold away their lands. It was also contended that the land in question was Gauchar land and it could not be

granted to the plaintiff. It was then contended that it was within the discretion of the officer to grant the land or not and, hence, the court had no jurisdiction to try the suit.

4. The learned Trial Judge held that the court had no jurisdiction to entertain the suit in view of the provisions of Bombay Revenue Jurisdiction Act, 1876. On merits, the learned Trial Judge held that the view of the Government that the plaintiff was not entitled to get the land since he had already sold away his other lands was perfectly valid and justified. He also held that he was unable to hold that the plaintiff had demanded Government land.

5. On appeal, the learned Assistant Judge held that the jurisdiction of the court to entertain the suit was barred in view of the provisions of Section 4(FC) of Bombay Revenue Jurisdiction Act. On merits, he held that the revenue authority was justified in coming to the conclusion that the land demanded by the plaintiff was part of the Gauchar land. He also held that the court cannot grant decree for declaration as the plaintiff himself is not certain regarding the identity of the land. The learned Assistant Judge, therefore, dismissed the appeal.

6. The appellant - plaintiff has, therefore, filed this Second Appeal challenging the judgment and decree of courts below dismissing his suit. At the time of admission, the following substantial questions of law were formulated:

(A) Whether the Courts below erred in holding that the Civil Court had no jurisdiction to try the suit of the present nature in view of Section 4(FC) of the Bombay Revenue Jurisdiction Act 1876?

(B) Whether the Government Resolution dated 3rd January 1965 was interpreted legally and properly construed and whether the Government Resolution dated 3rd January 1965 a statutory right to get waste land on old tenure basis up to one family holding as admittedly the plaintiff was both an Inamdar as well as Ex-Serviceman?

(C) Whether the matter regarding grant of such land was of purely administrative discretion as is erroneously held by the

Court or it was a matter of right of the class of Inamdars as well as of the class of Ex-Servicemen?

(D) Whether therefore the orders passed by the Revenue Officers were illegal, improper, null and void and discriminatory because they had not used judicial discretion in and passing the same as enjoined upon them by the Government Resolution under an Act?

(E) Whether the said orders were illegal as per the ruling of the Supreme Court in the case reported in A.I.R. 1964 Supreme Court 72 (Pratapsing V. State of Punjab) in as much as the same is hit by the four criteria laid down in the said judgment?

(F) Whether the Courts erred in law in considering an extraneous fact of sale of land by the plaintiff for payment of debts. The date material was 31st December, 1958. On that day the plaintiff was entitled to get the land or any day he was so entitled when needed by him because it was on account of the expropriatory nature of the legislation that he lost his Inam lands?

(G) Whether on the facts proved in the case the land asked for by the plaintiff can be called Gauchar land?

The learned counsel for the appellant contended that the land demanded by the plaintiff was not Gauchar land and that the revenue authorities had erred in taking into consideration an extraneous fact namely, that the plaintiff had sold away his other lands, because they failed to see that the plaintiff had been compelled to sell the lands for payment of debts. Now the findings recorded by the learned Assistant Judge that the plaintiff himself was not certain regarding the identity of the land and that the revenue authorities were justified in coming to the conclusion that the land demanded by the plaintiff was Gauchar land are findings of fact based on appreciation of evidence and it cannot be said that the learned Judge has committed any error of law in arriving at the said findings. The Trial Court has also rightly held that the orders of the revenue officers were perfectly valid and justified when the

lands were granted for a benevolent purpose but the plaintiff had already sold away his lands and, hence, he was not entitled to claim Government land as of right. No ground is made out for interfering with the discretionary orders of the revenue authorities and the courts below were justified in dismissing the plaintiff's suit. In the circumstances, it is not necessary to go into the question whether the court had any jurisdiction to try the suit since the plaintiff has failed to make out any ground for interference, assuming that the court had jurisdiction. No question of law, as formulated arises in the present case. The appeal is, therefore, dismissed. No order as to costs.

(M.C. Patel, J.)

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